

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) Crim. No. 03-91-SLR
)
ANDRE HUGGINS,)
)
 Defendant.)

MEMORANDUM ORDER

At Wilmington this 17th day of November, 2004, having considered defendant's motion to dismiss the indictment with prejudice pursuant to 18 U.S.C. § 3162 and the papers submitted in connection therewith;

IT IS ORDERED that said motion (D.I. 53) is denied for the reasons that follow:

1. **The Speedy Trial Act.** The Speedy Trial Act ("the Act") requires that the trial of a criminal defendant begin within seventy days of the filing of the indictment or the date of the defendant's first appearance before a judicial officer, whichever is later. 18 U.S.C. § 3161(c)(1). "Congress enacted the Speedy Trial Act to give effect to the Sixth Amendment right to a speedy trial by setting specified time limits after arraignment or indictment within which criminal trials must be commenced."

United States v. Rivera Construction Co., 863 F.2d 293, 295 (3d

Cir. 1988) (quoting H.R.Rep. No. 1508, 93d Cong., 2d Sess. (1974)). The remedy for a violation of the Act is dismissal of the indictment. 18 U.S.C. § 3162(a)(2); see United States v. Brenna, 878 F.2d 117, 120 (3d Cir. 1989).

There exist, however, "certain carefully defined periods of delay" that are automatically excluded from the calculation of the seventy-day period. Id. These include: a delay resulting from an examination of the defendant; a delay resulting from pretrial motions; and matters taken under advisement by the court. United States v. Felton, 811 F.2d 190, 195 (3d Cir. 1987); United States v. Lattany, 982 F.2d 866, 871-72 (3d Cir. 1992); see 18 U.S.C. § 3161(h)(1)-(7). The Act also permits a judge to impose open-ended extensions of excludable time upon a finding that the "ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial." 18 U.S.C. § 3161(h)(8)(A).

A criminal defendant has the burden of asserting a violation of the Act prior to his trial. United States v. Gomez, 67 F.3d 1515, 1519 (10th Cir. 1995). The right to a speedy trial, however, is important and belongs not just to the defendant but to the public at large. United States v. Carrasquillo, 667 F.2d 382, 389 (3d Cir. 1981).

2. **Procedural History.** On August 27, 2003, defendant was arrested pursuant to a federal criminal complaint and warrant.

(D.I. 1, 2) He was detained pending a hearing on plaintiff's detention motion. (D.I. 3, 4, 5) On September 5, 2003, preliminary and detention hearings were held and defendant was ordered detained pending trial. (D.I. 6) On September 23, 2003, the grand jury returned a two-count sealed indictment against defendant and a co-defendant charging them with conspiracy to possess with intent to distribute and possession with intent to distribute cocaine on May 28, 2003. (D.I. 8)

On October 2, 2003, defendant filed five pretrial motions. (D.I. 11, 12, 13, 14, 15) On November 6, 2003, defendant was arraigned and entered a plea of not guilty. Defendant's request for additional time to file pretrial motions was granted by Magistrate Judge Mary Pat Thyng. Defendant was given December 5, 2003 as the pretrial motions deadline and the court excluded the time between November 6, 2003 and December 5, 2003 under the Act. (D.I. 21)

On December 8, 2003, the court conducted a telephonic status conference with the parties and granted defendant's request to extend the supplemental motion deadline to January 5, 2004.

(D.I. 25) On December 16, 2003, a superseding indictment with notice of forfeiture were returned by the grand jury. (D.I. 28) In addition to the charges in the original indictment, defendant was now charged with conspiracy to possess with intent to distribute 5 kilograms or more of cocaine and with violation of

the statute that prohibits use of a dwelling for storing or distributing drugs. This indictment referenced the time period of April 28, 2003 to July 11, 2003. (D.I. 28)

On January 7, 2004, defendant moved to suppress statements made at the time of his arrest. (D.I. 30) On January 23, 2004, defendant was arraigned and entered a plea of not guilty on the superseding indictment.

On February 25, 2004, the grand jury returned an eleven-count second superseding indictment with notice of forfeiture charging defendant with distributing cocaine base, conspiracy to possess with intent to distribute and distribution of cocaine and cocaine base and with money laundry from November 2001 through June 2002. (D.I. 37)

On April 13, 2004, defendant entered a plea of not guilty to the second superseding indictment. Magistrate Judge Thyng excluded March 24 to April 13, 2004 from the Act based on the interests of justice. (D.I. 39) Judge Thyng further excluded April 13 to May 20, 2004 from the Act to allow defendant additional time to file pretrial motions. (D.I. 38) Defendant's request for bail review was denied.

After a telephonic status conference with the parties on May 25, 2004, the court allowed defendant additional time to file all pretrial motions and/or supplemental motions by April 4, 2004 and scheduled a hearing on said motions for June 22, 2004. (D.I. 41,

42)

On the date of the suppression hearing, defendant requested a continuance and an extension of time to file pretrial motions. The court agreed and ordered the motion deadline reset to July 14, 2004. Defendant verbally waived any speedy trial objection from June 22, 2004 to August 2, 2004, the date of the rescheduled hearing. (D.I. 90 at 27-30)

On July 9, 2004, the court granted defendant's request for a one-week extension of time to file motions. (D.I. 50) On July 14, 2004, defendant filed three motions. (D.I. 52, 53, 54, 55) On August 3, 2004, the court conducted an evidentiary hearing on the motion to suppress. (D.I. 72) On October 12, 2004, the grand jury returned a third superseding indictment with notice of forfeiture. (D.I. 80) Said indictment references conduct from November 2001 through June 2002. The court denied defendant's motions to dismiss the indictment and to suppress statements. (D.I. 81, 82)

3. **The Record.** This record is replete with defense motions that have caused excludable time to factor into defendant's speedy trial time. Moreover, the court has entered orders tolling time in response to defense requests and the three superseding indictments. Consequently, these exclusions of time have moved defendant's last day on which trial can begin to January 21, 2005. Because trial is currently scheduled to begin

on January 10, 2005, the court finds no violation of the Act.

4. **The Gilding Exception.**¹ Defendant asserts that the substantive counts of the superseding indictments are "mere gildings" of the original conspiracy charges brought in August 2003 and do not require additional proofs. (D.I. 54) He argues that plaintiff used the original criminal complaint and warrant to detain him in order to allow federal authorities to build its case against him. He contends that plaintiff is trying to circumvent the Act because the subsequent superseding indictments are subject to the same Act limitations as the original indictment. (D.I. 54) Plaintiff counters that each superseding indictment has added new charges which allege entirely different criminal conduct occurring on new dates not mentioned in the original indictment. (D.I. 59) Further, because there is no Act violation at bar, plaintiff asserts that the gilding exception argument is inapplicable to this record.

The court agrees. As discussed above, the record reflects that defendant's Speedy Trial rights have not been violated and that trial has been scheduled within the applicable time

¹Although the Third Circuit has not addressed whether this exception truly exists under the Act, that Court has explained that "a subsequent prosecution may be barred if it is based on an indictment which merely 'gilds' an earlier charge or if the subsequent charge is a mere difference in accusational dates." United States v. Watkins, 339 F.3d 167, 177 (3d Cir. 2003).

limitations. In the absence of a violation of the Act, it is premature to examine defendant's gilding exception argument.

Sue L. Robinson
United States District Judge